

**Letter of Findings: 04-20160143**  
**Gross Retail Tax**  
**For the Years 2012, 2013, and 2014**

**NOTICE:** IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

### HOLDING

Indiana Construction Contractor was not entitled to an adjustment of sales and use tax assessed during an audit; the documentation provided by Construction Contractor indicated that it paid sales tax on the original purchases, but there was no indication that the Department had assessed additional tax on these purchases.

### ISSUE

#### **I. Gross Retail Tax - Audit Assessment.**

**Authority:** IC § 6-2.5-2-1; IC § 6-2.5-1-2; IC § 6-2.5-3-2; IC § 6-2.5-4-1; IC § 6-2.5-5 et seq.; IC § 6-8.1-5-1(c); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007).

Taxpayer argues that the Department's audit assessed sales tax on purchases for which tax had been paid.

### STATEMENT OF FACTS

Taxpayer is an Indiana construction contractor. Taxpayer enters into agreements to improve its customers' real property. Most of the agreements call for the customer to pay one amount ("lump sum") for both Taxpayer's labor costs and for the cost of any tangible personal property used to fulfill the contract. On occasion, Taxpayer will simply sell the customer the tangible personal property and separately charge the customer for the labor costs ("time and materials").

The Indiana Department of Revenue ("Department") conducted a sales and use tax audit of Taxpayer's business records and sales tax returns. The audit resulted in an assessment of additional tax. Taxpayer disagreed with the assessment and submitted a protest to that effect. An administrative hearing was conducted by telephone during which Taxpayer's representative explained the basis for the protest. This Letter of Findings results.

#### **I. Gross Retail Tax - Audit Assessment.**

### DISCUSSION

The Department's audit found that Taxpayer purchased construction materials without paying sales tax at the time of the audit. In instances in which the materials were used to improve customers' real estate, Taxpayer charged customers a lump sum amount. In those specific instances, the audit concluded that Taxpayer was responsible for paying the tax.

In addition, the audit found that Taxpayer had purchased tools, equipment, and supplies for which Taxpayer failed to pay the tax. The audit also found that Taxpayer had made purchases of equipment ("capital assets") for which no documentation was available to prove that the tax was paid.

Taxpayer submitted copies of three invoices from an Indiana company called Kling's Computers. Each of the three vendor invoices indicated that Taxpayer was billed for the price of certain materials and for seven-percent Indiana sales tax. The total amount of the sales tax on the three invoices was \$190.29. Taxpayer also provided documentation showing that it had paid the total amount of this vendor's bills.

Taxpayer asks that the audit assessment be adjusted to reflect the \$190.29 in tax previously paid.

In challenging any assessment by the Department, it is a taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Thus, the Taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong.

Pursuant to IC § 6-2.5-2-1, a sales tax, known as state gross retail tax, is imposed on retail transactions made in Indiana unless a valid exemption is applicable. IC § 6-2.5-5 et seq. Retail transactions involve the transfer of tangible personal property. IC § 6-2.5-1-2; IC § 6-2.5-4-1. A complementary excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana if the property was acquired in a retail transaction. IC § 6-2.5-3-2.

Taxpayer's documentation shows that it paid tax on purchases made from Kling's Computers. However, a review of the audit report fails to show that the Department assessed tax on any of these particular purchases. Although - as Taxpayer explains - the invoices were not available at the time of the audit - the Department is not prepared to agree that the invoices would in any way affect the outcome of that report.

Taxpayer has not met its burden under IC § 6-8.1-5-1(c) of establishing that any portion of the pending assessment was wrong.

### **FINDING**

Taxpayer's protest is respectfully denied.

*Posted: 06/29/2016 by Legislative Services Agency*  
An [html](#) version of this document.